

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CURT BECKER)	
Claimant)	
VS.)	
)	
ASSOCIATED MILK PRODUCERS, INC.)	Docket No. 162,227
Respondent)	
AND)	
)	
KEMPER INSURANCE, a/k/a)	
AMERICAN MOTORIST INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant appealed the March 3, 1999 post-award Order entered by Administrative Law Judge Bryce D. Benedict. The Appeals Board heard oral argument in Wichita, Kansas, on August 13, 1999.

APPEARANCES

Lawrence M. Gurney of Wichita, Kansas, appeared for the claimant. P. Kelly Donley of Wichita, Kansas, appeared for the respondent and its insurance carrier.

RECORD

The record consists of the transcript from the hearing held before Judge Benedict on March 1, 1999 as well as the orders and awards previously entered in this proceeding.

ISSUES

This is a post-award proceeding to determine whether the respondent and its insurance carrier have satisfied the award of permanent partial disability benefits that was entered in this case. Claimant was injured on March 14, 1991. The initial award that was entered in this proceeding was modified by an agreed review and modification award dated May 22, 1995. Believing they had paid the total amount due under the agreed award, the respondent and its insurance carrier stopped paying the weekly permanent partial general

disability benefits. Claimant then filed this proceeding requesting an order that payments continue for the remainder of the 415-week period as set forth in the agreed award.

After conducting a hearing on March 1, 1999, the Judge found that the respondent and its insurance carrier had paid all of the disability benefits due under the agreed award and, therefore, denied claimant's request for an order requiring additional payment. The Judge also awarded claimant \$400 in attorney fees but denied the request for reimbursement of mileage expense to and from the hearing.

Claimant contends the Judge erred by finding that the award had been satisfied. He contends that (1) respondent and its insurance carrier failed to prove that they had paid the total amount due and (2) if the respondent and its insurance carrier did make any accelerated payment or overpayment of benefits, they should not be entitled to a credit for those amounts but, instead, be required to continue to make weekly payments of benefits for the entire 415-week period as set forth in the agreed award. Claimant also requests additional fees for the services rendered before Judge Benedict and for the services rendered in this appeal. Additionally, claimant requests \$80 for reimbursement of mileage expense.

Conversely, the respondent and its insurance carrier request the Appeals Board to affirm the Judge's finding that claimant has been paid all the disability benefits that he is entitled to receive. Further, they do not contest the Judge's award of attorney fees or that claimant's attorney has spent approximately 4.5 hours in preparing for and presenting this appeal. But they do not agree that claimant is entitled to be reimbursed mileage expense that was incurred in this matter or that claimant should be awarded any additional attorney fees.

Neither claimant nor the respondent and its insurance carrier cited authority for any of their contentions.

The only issues before the Board on this appeal are:

1. Have the respondent and its insurance carrier satisfied the award of disability benefits?
2. Is claimant entitled to receive reimbursement of mileage expense that was incurred to and from the March 1, 1999 hearing?
3. To what extent is claimant entitled to an award of attorney fees for this post-award proceeding?

FINDINGS OF FACT

After reviewing the entire record, the Appeals Board finds:

1. Mr. Becker was injured while working for Associated Milk Producers, Inc., on March 14, 1991.

2. On May 22, 1995, the parties entered into an agreed award modifying an earlier one. The agreed award provided that Mr. Becker was to receive (1) 57.82 weeks of temporary total disability benefits at \$236.27 per week, (2) 96.89 weeks of permanent partial general disability benefits at \$89.19 per week, and (3) 260.29 weeks of permanent partial general disability benefits at \$95.69 per week. The disability benefits due under that award totaled \$47,209.90.

3. At the March 1, 1999 hearing before Judge Benedict, Associated Milk Producers and its insurance carrier introduced a copy of the insurance carrier's payment records. Those records indicate that the carrier has paid a total of \$47,279.23 in disability benefits in this claim.

4. Mr. Becker's attorney expended approximately four hours in presenting this post-award matter to the Judge and approximately 4.5 hours in preparing and presenting this appeal to the Appeals Board. Additionally, Mr. Becker's attorney drove approximately 250 miles round trip to attend the March 1, 1999 hearing.

CONCLUSIONS OF LAW

1. Because the May 22, 1995 agreed award did not contain specific language that Associated Milk Producers and its insurance carrier were to receive credit for payments previously made, Mr. Becker argues that credit should not be allowed for any previous overpayments. The Appeals Board disagrees with that analysis as it appears in direct conflict with the provisions of the Workers Compensation Act.

2. The Act provides that an employer receives a credit for the benefits paid before the date of an award¹ or the date of a review and modification award.² Because of that credit, the award of disability benefits has been satisfied and the Judge's finding to that effect is affirmed.

3. The Judge awarded attorney fees based upon approximately \$100 per hour. Because that hourly rate was not contested and there was no evidence that another rate would be more appropriate, the Appeals Board adopts the \$100 per hour rate for assessing fees for services rendered in this appeal.

¹ K.S.A. 44-525(b).

² Ratzlaff v. Friedeman Service Store, 200 Kan. 430, 436 P.2d 389 (1968).

4. The Appeals Board affirms the Judge's finding that Mr. Becker's attorney is entitled to receive \$400 in attorney fees for the services rendered in presenting this post-award matter to the Judge. Additionally, the Board concludes Mr. Becker is entitled to receive an additional \$450 in attorney fees for the services rendered in this appeal.

5. The request for mileage reimbursement should be denied. In workers compensation proceedings the rights of the parties are defined and limited by the Act. Because the Act does not provide that a worker may recover expenses in a post-award proceeding, the Division lacks the authority to order them reimbursed.

AWARD

WHEREFORE, the Appeals Board affirms the March 3, 1999 post-award Order entered by Judge Benedict. Additionally, the Appeals Board grants claimant an additional \$450 in attorney fees for services rendered in this appeal.

IT IS SO ORDERED.

Dated this ____ day of September 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Lawrence M. Gurney, Wichita, KS
P. Kelly Donley, Wichita, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director